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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,680

03/10/2006

Jean-Yves Lazennec

0617-1003

8389

466 7590 12/17/2008

YOUNG & THOMPSON
209 Madison Street
Suite 500
ALEXANDRIA, VA 22314

EXAMINER

SCHILLINGER, ANN M

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

12/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,680	Applicant(s) LAZENNEC ET AL.	
	Examiner ANN SCHILLINGER	Art Unit 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 12, 14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 12, 14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noiles (US Pat. No. 4,642,123) in view of Subba Rao et al. (US Pub. No. 2001/0051831).

Noiles discloses the following: an acetabular implant for hip prosthesis, comprising an insert (14) having a spherical internal cavity (32), and a hemispherical kernel (12) having an internal spherical cavity (21) adapted to cooperate with a femoral head (10) for universal movement of the femoral head within said internal cavity of said kernel, said hemispherical kernel having universal movement within said insert (col. 4, lines 7-13). Noiles also discloses the center of the spherical internal cavity of the insert for universal movement of the hemispherical kernel within said insert being spaced from the center of the internal spherical cavity of the kernel as shown in Figures 1-4. However, Noiles does not disclose the hemispherical kernel being thinner at its central region than its peripheral regions. Subba Rao et al. teaches a hip implant system with this thickness change in Figure 1 and paragraphs 0032-0047 for the purpose of better accommodating the other parts of the prosthesis. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a hemispherical kernel thinner at its central region than its peripheral regions in order to better accommodate the other parts of the prosthesis.

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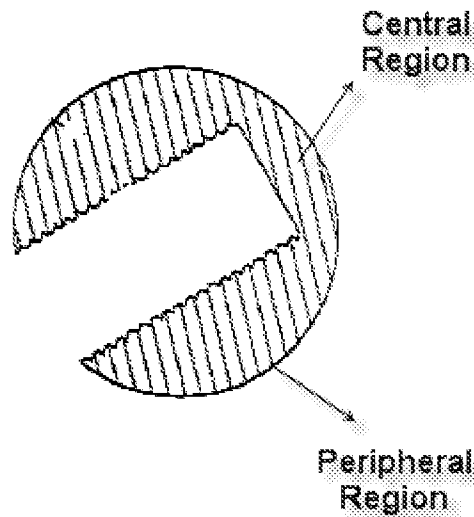
Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Noiles in view of Subba Rao et al. further in view of Tronzo (US Pat. No. 4,681,589). Noiles, as modified by Subba Rao, teaches the invention substantially as claimed, however, they do not teach a hemispherical kernel whose thickness increases from the central region to the opening of the internal spherical cavity. Tronzo teaches an acetabular cup with a trapezoidal hemispherical kernel whose thickness increases from the central region to the opening of the internal spherical cavity in col. 3, line 61 through col. 4, line 28 for the purpose of compensating for bone shrinkage. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the hemispherical kernel of Noiles and Subba Rao with a trapezoidal cup that has a thickness that increases from the central region to the opening of the internal spherical cavity in order to compensate for potential bone shrinkage.

Response to Arguments

Applicant's arguments filed 9/19/2008 have been fully considered but they are not persuasive. As stated in the previous office action dated 3/19/2008, the motivation provided for the combination of the Noiles and the Subba Rao et al. references is that making the hemispherical kernel thinner at its central region than its peripheral regions will better accommodate the other parts of the prosthesis. The Applicant contends that this combination cannot be made because this principle cannot be applied to the present invention. However, the fact that the Applicant has a hemispherical kernel which is thinner at its central region than its peripheral regions for a different reason, does not alter the conclusion that its use in a prior art device would be *prima facie* obvious from the purpose disclosed in the reference.

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The Applicant further contends that the Subba Rao reference does not teach the kernel having a thinner central region that progressively gets thicker as it moves towards the peripheral region. The examiner respectfully disagrees. The figure below illustrates how the examiner is interpreting the language of claim 11.



Newly submitted claim 16 describes the peripheral region as having to extend all the way to the opening of the internal spherical cavity. Therefore, the claim warrants a new rejection, as the Subba Rao reference does not increase in thickness to that point.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. S./

Examiner, Art Unit 3774

/William H. Matthews/

Primary Examiner, Art Unit 3774